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5 **UNITED STATES DISTRICT COURT**

6 **DISTRICT OF NEVADA**

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8 ROBERT TEDONE,

9 Plaintiff,

10 vs.

11 UNITED STATES GOVERNMENT,

12 Defendant.

Case No. 2:20-cv-02197-KJD-VCF

**ORDER**

APPLICATION TO PROCEED *IN FORMA PAUPERIS* (ECF NO. 1); COMPLAINT (ECF NO. 1-1)

13 Before the Court are pro se plaintiff Robert Tedone's application to proceed *in forma pauperis*  
14 (ECF No. 1) and complaint (ECF No. 1-1). Tedone's (1) *in forma pauperis* application is granted; (2)  
15 his complaint is dismissed without prejudice with leave to amend.

16 **DISCUSSION**

17 Tedone's filings present two questions: (1) whether Tedone may proceed *in forma pauperis*  
18 under 28 U.S.C. § 1915(e) and (2) whether Tedone's complaint states a plausible claim for relief.

19 **I. Whether Tedone May Proceed In Forma Pauperis**

20 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action "without prepayment of fees or  
21 security thereof" if the plaintiff submits a financial affidavit that demonstrates the plaintiff "is unable to  
22 pay such fees or give security therefor." Plaintiff's application to proceed *in forma pauperis* includes a  
23 declaration under penalty of perjury that plaintiff is unable to pay the costs of these proceedings. (ECF  
24 No. 1). Plaintiff's affidavit states that he has no wages, that he receives \$836 per month in Social  
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1 Security benefits, and that he has about \$525 in savings. (*Id.*) Plaintiff's application to proceed in forma  
 2 pauperis is granted.

## 3 **II. Whether Tedone's Complaint States a Plausible Claim**

### 4 **a. Legal Standard**

5 Because the Court grants Tedone's application to proceed *in forma pauperis*, it must review  
 6 Tedone's complaint to determine whether the complaint is frivolous, malicious, or fails to state a  
 7 plausible claim. 28 U.S.C. § 1915(e)(2)(B). Federal Rule of Civil Procedure 8(a)(2) provides that a  
 8 complaint must contain "a short and plain statement of the claim showing that the [plaintiff] is entitled  
 9 to relief." The Supreme Court's decision in *Ashcroft v. Iqbal* states that to satisfy Rule 8's requirements,  
 10 a complaint's allegations must cross "the line from conceivable to plausible." 556 U.S. 662, 680 (2009)  
 11 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547, (2007)). Rule 12(b)(6) of the Federal Rules  
 12 of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can  
 13 be granted. A complaint should be dismissed under Rule 12(b)(6) "if it appears beyond a doubt that the  
 14 plaintiff can prove no set of facts in support of his claims that would entitle him to relief." *Buckey v. Los*  
 15 *Angeles*, 968 F.2d 791, 794 (9th Cir. 1992).

17 "[A] pro se complaint, however inartfully pleaded, must be held to less stringent standards than  
 18 formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v.*  
 19 *Gamble*, 429 U.S. 97, 106 (1976)). If the Court dismisses a complaint under § 1915(e), the plaintiff  
 20 should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is  
 21 clear from the face of the complaint that the deficiencies could not be cured by amendment. *Cato v.*  
 22 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

23 Federal courts have limited jurisdiction and are only able to hear cases authorized by the  
 24 Constitution and Congress. *Polo v. Innoventions Int'l, LLC*, 833 F.3d 1193, 1195-96 (9th Cir. 2016).  
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1 The general bases for federal jurisdiction are (1) the action arises under federal law or that (2) all  
 2 plaintiffs are diverse in citizenship from all defendants and the amount in controversy exceeds \$75,000.  
 3 See 28 U.S.C. §§ 1331, 1332. “Section 1332 requires complete diversity of citizenship; each of the  
 4 plaintiffs must be a citizen of a different state than each of the defendants.” *W. States Wholesale Nat.*  
 5 *Gas Antitrust Litig. v. Coral Energy Res., L.P.*, 346 F. Supp. 2d 1143, 1144 (D. Nev. 2004).

### 6 **b. Plaintiff’s Complaint**

7 Tedone brings claims against the United States Government pursuant to the Federal Tort Claims  
 8 Act (FTCA) because the government offered him government housing in a high crime neighborhood.  
 9 (ECF No. 1-1 at 22). It appears that Tedone declined the public housing and did not move into the  
 10 allegedly unsafe government housing: he seeks damages, “calculated as the difference between the rent  
 11 [he] paid in an inflated market, and the rent [he] would have paid in the Program.” *Id.* The FTCA, a  
 12 limited waiver of the United States's sovereign immunity, permits persons injured by federal-employee  
 13 tortfeasors to sue the United States for damages in federal district court. 28 U.S.C.S. § 1346. The FTCA  
 14 requires, as a prerequisite for federal court jurisdiction, that a claimant first provide written notification  
 15 of the incident giving rise to the injury, accompanied by a claim for money damages to the federal  
 16 agency responsible for the injury. 28 U.S.C.S. § 2675(a); 28 C.F.R. § 14.2(b). Exhaustion of the claims  
 17 procedures established under the Act is a prerequisite to district court jurisdiction. *Munns v. Kerry*, 782  
 18 F.3d 402, 406 (9th Cir. 2015)

20 Plaintiff does not allege that he exhausted his remedies, as required by the FTCA, prior to  
 21 bringing this suit, thus this Court does not have jurisdiction to hear this case. This Court lacks subject  
 22 matter jurisdiction and the Court dismisses this case. Fed. R. Civ. P. 12(h)(3); *Cat Diversified*  
 23 *Promotions, Inc. v. Musick*, 505 F.2d 278, 280 (9th Cir. 1974) (“It has long been held that a judge can  
 24 dismiss sua sponte for lack of jurisdiction.”). Even if plaintiff could show that he exhausted his  
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1 remedies, plaintiff has not stated a plausible claim because he has not been injured. Plaintiff admits that  
2 he voluntarily declined the offer of public housing based on his own assessment that the housing was  
3 unsafe. To establish U.S. Const. art. III standing, a plaintiff must show (1) an injury in fact, (2) a  
4 sufficient causal connection between the injury and the conduct complained of and (3) a likelihood that  
5 the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.  
6 Ct. 2130, 2136 (1992). An injury sufficient to satisfy U.S. Const. art. III must be concrete and  
7 particularized and actual or imminent, not conjectural or hypothetical. *Id.* Plaintiff has not stated a  
8 concrete injury because he declined to live in the government housing he complains about, and his  
9 allegations that the government housing is in a dangerous neighborhood that would have exposed him to  
10 violence is hypothetical. The Court will give the plaintiff one opportunity to amend his complaint to  
11 address these deficiencies.

12 ACCORDINGLY,

13 IT IS ORDERED that Tedone's application to proceed in forma pauperis (ECF No. 1) is  
14 GRANTED.

15 IT IS FURTHER ORDERED that the Clerk of Court shall file the Complaint (ECF No. 1-1).

16 IT IS FURTHER ORDERED that Tedone's complaint (ECF No. 1-1) is DISMISSED  
17 WITHOUT PREJUDICE.

18 IT IS FURTHER ORDERED that Tedone has until Wednesday, February 10, 2021 to file an  
19 amended complaint addressing the issues discussed above. Failure to timely file an amended complaint  
20 that addresses the deficiencies noted in this Order may result in a recommendation for dismissal with  
21 prejudice.

22 IT IS FURTHER ORDERED that if an amended complaint is later filed, the Clerk of the Court is  
23 directed NOT to issue summons on the amended complaint. The Court will issue a screening order on  
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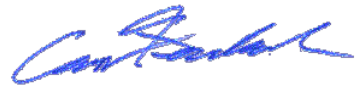
1 the amended complaint and address the issuance of summons at that time, if applicable. See 28 U.S.C. §  
2 1915(e)(2).

3 **NOTICE**

4 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and  
5 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk  
6 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal  
7 may determine that an appeal has been waived due to the failure to file objections within the specified  
8 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file  
9 objections within the specified time and (2) failure to properly address and brief the objectionable issues  
10 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the  
11 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*  
12 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Pursuant to LR IA 3-1, the plaintiff must immediately file  
13 written notification with the court of any change of address. The notification must include proof of  
14 service upon each opposing party's attorney, or upon the opposing party if the party is unrepresented by  
15 counsel. Failure to comply with this rule may result in dismissal of the action.  
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17 IT IS SO ORDERED.

18 DATED this 11th day of January 2021.

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20 CAM FERENBACH  
21 UNITED STATES MAGISTRATE JUDGE  
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